

March 11, 2008

Mr. Mark V. Rosenker
Chairman
National Transportation Safety Board
490 L'Enfant Plaza, SW
Washington, DC 20594

RE: San Francisco Bay Pilotage Oversight

Dear Sir:

The Pacific Merchant Shipping Association (PMSA) represents ocean carriers and marine terminals that conduct business at ports in California and the State of Washington. Prior to your upcoming hearing on April 8th, and generally as part of your ongoing investigation into the causes of the *Cosco Busan* incident of November 7, 2007, we felt it proper to contact you directly with our observations and concerns with regard to state oversight of the San Francisco Bay's pilotage system.

We share National Transportation Safety Board's goal in making our marine transportation system as safe as possible. To that end, the members of PMSA are committed to every effort which will ensure that compulsory, monopolistic pilotage systems are effectively and comprehensively regulated. It is our belief that such regulation is an essential component of safe pilotage; as such, we expect the State of California to regulate pilotage as robustly as possible in the San Francisco Bay and River systems. And yet, the very structure of the Board of Pilot Commissioners under California law lends itself to less than the most robust and vigorous licensure practices possible. Specifically, there is no functional legislative sunshine on this relatively obscure Board, a lack of oversight which is only combined by the fact that it does not sit squarely within any department of the State.

The Board of Pilot Commissioners does not report directly to any administrative agency or department and, as a consequence of this benign neglect, it has never been subject to a performance audit. The Commission simply seems to operate "off the grid" of California's sunshine statutes and oversight regimes. We believe that the public interest would be better served if the Board of Pilot Commissioners was subject to better checks and balances.

Chairman Rosenker, NTSB
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March 11, 2008
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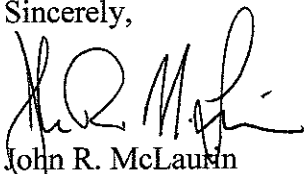
Comprehensive and robust safety organizations should be routinely scrutinized and audited in order to maintain best practices, a focus on safety, and prevent lax enforcement of previously adopted rules. Yet, attached is a 2007 letter from the Commission in which they informed the Legislature that they "self audit." We believe this situation is incompatible with best practices for a pilot licensing organization. Please also note the attached Sacramento Bee column, which rightly points out that the Commission should be subject to enhanced legislative oversight.

In light of the *Cosco Busan* incident, we believe that the time has come to evaluate whether or not the pilotage offered within our marine transportation system would be safer as a result of additional ongoing scrutiny and oversight. In California, as a matter of sound public policy, the Legislature has determined that consumers and the public are better served by enhanced scrutiny and oversight of professional licensing – at least with regard to every other regulatory licensing entity it has created. The Pilot Commission escapes the requirements of regular legislative scrutiny applied to most other state licensed professionals, from doctors and dentists to barbers and cosmetologists, because of its unique location in Statute. We can see no difference why it should be otherwise for the Pilot Commission.

As an informational item, I am forwarding a copy of recently-introduced California Senate Bill 1627, a bill that moves the State Board of Pilot Commissioners for San Francisco Bay under the oversight of the Department of Consumer Affairs and subjects the Board to structural legislative scrutiny. We believe that, with the Pilot Commission's activities audited and reviewed on a continuing basis by independent entities, the provisions of SB 1627 will help to ensure the integrity of the process and the promote continued safe navigation. We would encourage your examination of the question of whether or not state pilotage would be improved with the type of scrutiny, sunshine and oversight proposed by SB 1627 as well.

While the colorful history of the Board of Pilot Commissioners is well known in the Bay Area, the painful lessons of the *Cosco Busan* provide policy makers and others the opportunity for a thorough and public debate on how to improve safety in the Bay. We encourage your review and would be pleased to answer any questions you may have or discuss any of these issues as your investigation proceeds.

Sincerely,



John R. McLaurin
President

enclosures

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Assembly California Legislature



JUAN ARAMBULA
ASSEMBLYMEMBER, THIRTY-FIRST DISTRICT

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BUDGET, SUB #4 - STATE ADMINISTRATION

MEMBER
BUDGET
HIGHER EDUCATION
REVENUE & TAXATION

June 1, 2007

Mr. Pat Moloney, Executive Director
Board of Pilot Commissioners
State of California
Pier 9, Suite 102
San Francisco, CA 94111

RE: Board of Pilot Commissioners – Request for Copies of Performance Audits

Dear Executive Director Moloney:

Several weeks ago a Board of Pilot Commissioners budget request was before Subcommittee #4 of the Assembly Budget Committee on State Administration. During the course of our discussion regarding requests for increased budget authorizations the members of the Subcommittee discussed following up on several topics.

Consistent with that discussion, we request that you provide the Subcommittee and its members with copies of any and all performance audits or evaluations completed with regard to the Board and its operations. If there are any other documents regarding the general administration of the Board and its performance that you believe would be of interest to the committee please submit those as well.

Please feel free to contact me or my committee staff with any questions you may have. Your prompt reply is appreciated.

Sincerely,

Juan Arambula
Chair, Assembly Budget Subcommittee #4



**Board of Pilot Commissioners for the Bays
of San Francisco, San Pablo and Suisun**

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18 June 2007

Assemblyman Juan Arambula
Chair, Assembly Budget Subcommittee #4
P. O. Box 942849
Sacramento, CA 94249-0031

Dear Assemblyman Arambula:

Thank you for your interest in the Board of Pilot Commissioners. As background, the Board has been in continuous existence since 1850 and is responsible for the oversight of the San Francisco Bar Pilots and the one remaining Inland Pilot. It is self funded from surcharges on the fees of the pilots. The commissioners are appointed by the governor. Three are public members, two are pilot members and two are shipping industry members (one from tankers and one from freighters). The Board has two full time employees; an Executive Director and an Administrative Assistant/Secretary.

In response to your query, the Board self audits. The shipping community members represent the industry which is charged for pilotage services and funds Board operations and training programs. They have the vested interest in ensuring the efficiency of Board operations. State oversight is provided through the Department of Consumer Affairs which provides among other things, budget analyst services to the Board. The Board does not report to DCA, they provide administrative services to the Board.

The Board's Finance Committee works closely with the DCA budget analyst to develop and adjust as necessary, a realistic budget. Occasionally an unforeseen event will occur that requires a Budget Change Proposal such as the recent identification of likely pilot retirements and a need for more trainees than planned upon. While most interaction is taken care of by telephone and e-mail, typically the budget analyst will attend several of the Finance Committee meetings followed by a Board meeting.

Other administrative oversight is handled by Board committees with participation by interested government and public stakeholders (US Coast Guard, Office of Oil Spill Prevention and Response, State Lands Commission,

Pacific Merchant Shipping Ass'n, etc.). The only documentation of this oversight are the minutes of the meetings. We would be happy to provide representative samples of those if so desired.

The Board and its regulated community are unusual in the State bureaucracy but have counterparts in Washington, Oregon, Florida and New York. If you have other questions I would happy to answer them.

Very respectfully,

A handwritten signature in dark ink, appearing to read "P. A. Moloney". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Captain P. A. Moloney
Board of Pilot Commissioners



The Web Site of The Sacramento Bee

This story is taken from Sacbee / Opinion / Wire Opinion.

DANIEL WEINTRAUB: Ship pilot, board deserve more scrutiny for spill

- Sacramento Bee

Published 9:50 pm PST Wednesday, December 12, 2007

Ever since the cargo ship Cosco Busan sideswiped the San Francisco-Oakland Bay Bridge last month, spilling 58,000 gallons of fuel oil into the bay, members of Congress and state legislators have been clamoring for investigations of just about everybody responsible for the spill and its cleanup.

The ship's owners and crew, the U.S. Coast Guard and the state agency in charge of preventing oil spills and cleaning them up have all come under intense scrutiny.

But the one party that has all but escaped notice from the politicians is the one most responsible of all: the pilot who guided the ship into the bridge support on that foggy November morning.

That pilot -- John Cota -- is part of a state-sanctioned system that grants a monopoly to a politically powerful association of 60 sea captains who earn half-million-dollar annual salaries and whose oversight board comprises members appointed by the governor.

Cota last week was accused of misconduct by the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun. The board's investigators said Cota never should have led the ship into the bay because visibility was too low. They also said the ship was moving too fast and that Cota failed to use a tugboat, the Coast Guard or the ship's lookout when any one of those resources might have helped him avoid hitting the bridge.

This was not Cota's first mishap. The veteran seaman had more than a dozen incidents on his record, mostly minor. The most recent, and perhaps the most serious, was when a ship Cota was piloting ran aground in the mud near Antioch. Cota was found to be at fault and was given a letter of reprimand.

The pilots' system is as old as the state itself, having been created by the first Legislature in 1850. Under this arrangement, 60 pilots who are partners in the San Francisco Bar Pilots Association are, in most cases, the only ones who can legally guide a ship into and out of the harbor. While they are technically only advisers to

the ships' captains, the bar pilots in practice are in charge whenever a ship is moving about in San Francisco Bay.

The pilots must have years of experience and undergo classroom schooling and on-board training just to get on a list to one day become a licensed bar pilot. Then they wait. The coveted jobs don't come open very often.

"Somebody has to retire or die," says Ray Paetzold, a lawyer for the Board of Pilot Commissioners.

The board operates mostly in obscurity, its business of interest primarily the pilots and the shipping industry, which pays the pilots' salaries and for their boats, equipment and training through charges set by the Legislature.

Earlier this year, Assemblyman Juan Arambula, D- Fresno, chairman of a legislative committee with responsibility for the commission's budget, asked the board for information about its business practices and accountability.

In a polite but terse reply, the board's executive director, Capt. P.A. Maloney, pretty much told Arambula to mind his own business.

"The board," Maloney wrote, "self-audits."

Arambula told me his interest was piqued by the lack of diversity among the pilots, who are mostly white males. "It seems to be a rather closed club," he said.

But in light of the recent accident, Arambula thinks the Legislature ought to take a closer look at the operation.

It would certainly be worth comparing the San Francisco system to the way the same job is done in Southern California. In Los Angeles, the harbor pilots are city employees overseen by the port. In Long Beach, they are employees of a private firm that contracts with the shippers. In both places, the pilots earn about half of what they get in the Bay Area.

Arambula said he would "rather not speculate" about why the Legislature seems so disinterested in the pilot and the regulatory board, but it might have something to do with the outsized influence of the pilots association. Though small in numbers, the pilots band together into a political action committee that regularly donates more than \$100,000 each election cycle to members of both parties.

In 2003, for example, the group donated \$4,000 to the campaign to stop the recall of then-Gov. Gray Davis and \$5,000 to the campaign of Lt. Gov. Cruz Bustamante, who was running to replace Davis in case the voters ousted him. But after the recall won and Bustamante lost to Arnold Schwarzenegger, the group switched sides, donating \$21,200 -- the maximum allowed by law -- to the new governor's campaign committee less than two weeks after he took office.

Cota, like his colleagues, was a regular donor. In the 2005-2006 election cycle, he contributed about \$3,500 to the San Francisco Bar Pilots Association.

Since Cota made the decisions that led to the accident, and the Board of Pilot Commissioners is the state agency responsible for the performance of Cota and his colleagues, shouldn't their actions before and during the incident be of just as much interest to the Legislature as the performance of the people called upon to clean up the mess?

About the writer:

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